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Irene Erickson v. Oran L. Beardall : Respondent's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

IRENE ERICKSON,
Plaintiff and Respondent,

vs.

ORAN L. BEARDALL,
Defendant and Appellant.

Case No.
10914

RESPONDENT'S BRIEF

Appeal from the Judgment of the Fourth Judicial District Court
in and for Utah County
Honorable Maurice Harding, Judge

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Clerk, Supreme Court, Utah

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IN THE SUPREME COURT OF THE STATE OF UTAH

IRENE ERICKSON,

Plaintiff and Respondent,

vs.

ORAN L. BEARDALL,

Defendant and Appellant.

Case No.
10914

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

Appellant and Respondent entered into a stipulation prior to a divorce. Appellant subsequently obtained the divorce and said stipulation was accepted by the Court and made a part of the Divorce Decree. The stipulation provided among other things that the Appellant would pay three fairly large family obligations. However, Appellant failed to make payments and then filed for Bankruptcy, listing said three obligations in

his bankruptcy petition. Plaintiff-Respondent sued to recover the amount of the payments.

The primary question involved in this litigation is whether or not the obligations covered by the stipulation and Divorce Decree would be a debt provable in bankruptcy, or whether it would not be dischargeable under Section 17, Title 11, Section 35, U.S.C.A. (Federal Bankruptcy Act) for the reason that it was for the maintenance or support of wife.

DISPOSITION IN LOWER COURT

The case was tried before Judge Maurice Harding of the Fourth Judicial District Court and Judgment was granted to the Plaintiff-Respondent. The Court in its Findings of Fact specifically found that said obligations were for maintenance and support of Defendant-Appellant's wife, and were not provable debts which would be dischargeable under Section 17 of the Federal Bankruptcy Act.

From this Judgment the Defendant appealed.

RELIEF SOUGHT ON APPEAL

Defendant seeks a reversal of the District Court Findings of Fact and Judgment. Plaintiff seeks to have the Findings of Fact and Judgment affirmed.

STATEMENT OF FACTS

The Statement of Facts as set forth in Appellant's Brief is generally correct but lacks detail in many material areas which should be brought to the attention of the Court. Respondent, therefore, will make a more detailed statement and set forth the Facts as developed by both parties.

The Appellant and Respondent were married on the 31st day of May, 1963, and lived together until August, 1965. (Tr. p. 5, 31). Appellant brought two minor children into the new family relationship, (Tr. p. 25) and Respondent one. Respondent's son had a heart condition and was unable to work. (Tr. p. 18). They all lived in Respondent's home. (Tr. p. 31).

Respondent was a widow, age 47, at the time of the marriage. She had been a housewife and had not worked outside the home virtually all of her married life, and had developed no employment skills to enable her to obtain a worthwhile job. She lived on Social Security and had savings in the approximate amount of \$4700.00. (Tr. p. 5, 16, 18). These savings were completely depleted before the parties separated, and in addition, three sizeable family obligations were incurred.

Divorce proceedings were started by Appellant in the latter part of August, 1965. In September, 1965, a settlement was worked out by Counsel for the parties, and a stipulation executed (Tr. p. 5, 14), which provided among other things as follows:

Defendant in Divorce action (Respondent) was to be awarded a 1965 Valiant automobile which had an unpaid indebtedness to Zions First National Bank in an amount of \$2,043.10. Plaintiff (Appellant) agreed to make all payments on this bill. Also he was to be awarded the 1964 Dodge Truck, although title was to be withheld from him until all bills covered by the Stipulation were fully paid.

Plaintiff in Divorce action (Appellant) was to sign a Promissory Note in the amount of \$1265.85, carry 6% interest and payable at the rate of \$50.00 per month.

Plaintiff (Appellant) was to pay off a family obligation to First Federal Savings and Loan Association for siding on Defendant (Respondent's) home in the amount of \$1,379.83; and also a family obligation to City Finance Company of Murray in the amount of \$471.64 as the balance due on an Encyclopedia set and a color T.V.

Defendant (Respondent's) Social Security check payable to her as a widow was cancelled upon her marriage. It could be reinstated when the divorce became final, so until that time, a cash monthly alimony of \$100.00 per month was to be paid by Plaintiff (Appellant).

The Stipulation contained this further provision: "Plaintiff hereby assumes and agrees to pay in full all of these obligations and will not allow them to become

delinquent and will save the Defendant harmless from any suit or action appertaining to any or all of those three bills."

This Stipulation was made a part of the Divorce Decree granted on the 27th day of October, 1965.

It is significant to note that Plaintiff (Appellant) paid a small amount on the Promissory Note and finally turned over his equity in the Dodge truck to meet this obligation. The evidence does not show that he made a single payment, however, on the other three obligations. Finally, the Bank repossessed the automobile about two months before Appellant filed for bankruptcy, much to the discomfort of the Respondent, who had to quit her out-of-town employment for lack of transportation. (Tr. p. 11, 12). She then had to cash in an insurance policy to pay off the siding obligation to the Savings and Loan Co. (Tr. p. 6) and had to make back payments current and thereafter, make monthly payments at the Finance Co.

Appellant, without making payments on the three obligations, filed for bankruptcy on July 28, 1966. His only creditors listed in the bankruptcy petition were the three covered by the Stipulation and Divorce Decree to Zion's First National Bank, First Federal Savings and Loan, and City Finance Co. of Murray, and one small additional bill to Dr. Kent Davis for dental work done to Appellant's son Phillip in the amount of \$84.00. (Tr. p. 15).

When Appellant refused to reimburse Respondent on these obligations, a complaint was filed, and action started to force payment.

Appellant answered alleging the obligations were discharged in bankruptcy. Various motions were heard and an amended complaint filed prior to trial. Respondent also remarried shortly before trial time.

At the non-jury trial before Judge Maurice Harding, the Court gave Judgment to the Respondent on three causes of action, after dismissing the Cause of Action on the note as having been satisfied.

The Findings of Fact by the Trial Court pertinent to the issues in question are as follows:

1. That during the month of September, 1965, Plaintiff and Defendant entered into a stipulation and settlement agreement in their divorce action. Such stipulation was accepted by the Court and made a part of the Findings and Decree of Divorce in Civil Case No. 28,806, and were signed by Judge R. L. Tuckett on the 27th day of October, 1965.

2. That the Defendant, without having made any payments on the obligations covered in Plaintiff's 2nd, 3rd, and 4th Causes of Action, filed for Bankruptcy on the 28th day of July, 1966, and listed therein, as being all of his debts, the obligations contained in the above-mentioned stipulation and Decree which constituted Plaintiff's 1st, 2nd, 3rd, and 4th Causes of Action herein, together with only one other debt, a \$84.00 bill

to Dr. Davis, a dentist for dental work done on Defendant's own son.

Second Cause of Action

4. That the Defendant, under the terms of the Stipulation and Decree above-mentioned, agreed to pay in full an obligation with the First Federal Savings and Loan Association for siding on Plaintiff's home at Lehi, Utah, with a balance owing of \$1,379.83. That the Defendant defaulted in the payment of this account, making it necessary for the Plaintiff to completely pay off the account, which was done on July 7, 1966, for a settlement figure of \$1,225.34, and thereby making Plaintiff entitled to interest at the rate of 6% per annum from July 7, 1966, and further interest upon the total award from date hereof until paid at the rate of 8% per annum.

5. That the Defendant filed for Bankruptcy on the 28th day of July, 1966, and listed the obligation covered in Plaintiff's 2nd Cause of Action, but that said obligation, incurred originally for siding for Plaintiff's home at Lehi, Utah, is for Maintenance and Support of Defendant's wife, and is not a provable debt which would be dischargeable under Section 17 of the Federal Bankruptcy Act.

Third Cause of Action

6. That the Defendant, under the terms of the Stipulation and Decree above-mentioned, agreed to pay

in full an obligation to the City Finance Company of Murray for a set of encyclopedias and a television set, in the amount of \$471.64. That the Defendant defaulted in the payment of this account, making it necessary for the Plaintiff to completely assume this obligation, and thereby making Plaintiff entitled to interest thereon from the date of said stipulation, September 16, 1965 at the rate of 6% per annum on \$471.64, and further interest upon the total award from date hereof until paid at the rate of 8% per annum.

7. That the Defendant filed for bankruptcy on the 28th day of July, 1966, and listed the obligation covered in Plaintiff's 3rd Cause of Action but that said obligation is for Maintenance and Support of Defendant's wife in the manner to which Plaintiff was accustomed, and is not a provable debt which would be dischargeable under Section 17 of the Federal Bankruptcy Act.

Fourth Cause of Action

8. That the Defendant under the terms of the stipulation and decree above mentioned agreed to pay in full an obligation with Zions First National Bank for a 1965 Valiant Automobile which was essential for Plaintiff's family use and employment, with a balance owing of \$2,043.10. That the Defendant defaulted in the payment of this account, and said Company came and repossessed said automobile, thus causing a loss to Plaintiff of \$2,043.10, together with interest thereon

as the payments fell due in the amount of 6% per annum, and further interest upon the total award from date hereof until paid at the rate of 8% per annum.

9. That the Defendant filed for bankruptcy on the 28th day of July, 1966, and listed the obligation in Plaintiff's 4th Cause of Action but that said obligation is for Maintenance and Support of Defendant's wife in the nature of a necessary family vehicle, and is not a provable debt which would be dischargeable under Section 17 of the Federal Bankruptcy Act.

STATEMENT OF POINTS

Throughout the remainder of this brief, Defendant will be referred to as Appellant and Plaintiff as Respondent. Respondent will argue the Appellant's points in the order in which they appear in Appellant's brief.

ARGUMENT

POINT I

THE EVIDENCE IN THE RECORD AND THE APPLICABLE LAW SUPPORTS THE TRIAL COURT FINDING THAT THE OBLIGATIONS TO FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION, CITY FINANCE COMPANY OF MURRAY, AND ZIONS FIRST NATIONAL BANK ARE FOR

MAINTENANCE AND SUPPORT OF THE RESPONDENT AND THEREFORE NOT DISCHARGEABLE IN BANKRUPTCY.

Section 17 of the Federal Bankruptcy Act, Title 11, Bankruptcy Section 35, U.S.C.A., contains the following provision:

“Debts not affected by a discharge. a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except such as (1) . . . ; (2) . . . or for alimony due or to become due, or for maintenance or support of wife or child, . . .”

A definition of the word “support” might be helpful to the Court in arriving at its decision. Ballentine’s Law Dictionary, 2nd Edition, states: Support “means maintenance, subsistence, or an income sufficient for the support of a family, and maintenance means sustenance, support by means of supplies of food, clothing, and other conveniences.”

The Respondent maintains and the District Court so held, that the obligations incurred during the marriage of the parties hereto for siding for the home, set of encyclopedias and television set, and automobile were for maintenance and support of Appellant’s wife.

We are concerned with the facts as they existed at the time Appellant and Respondent entered into a Stipulation, paving the way a short time later for a Divorce Decree.

After two years of marriage to Appellant, the Respondent no longer possessed approximately \$4,-700.00 she had prior to marriage. All was gone, and in addition, three sizeable family obligations had been incurred, all of which were to have been paid out of his wages. The following testimony was given at the trial:

(Mr. Hinton) "Q Now, these bills, when they were incurred, were they family obligations?"

(Irene Erickson Robison) "A Yes."

(Mr. Hinton) "Q Were they to be paid out of his wages?"

(Irene Erickson Robison) "A Yes."

(Mr. Hinton) "Q Did you have any way, on your own, of paying them?"

(Irene Erickson Robison) "A No." (Tr. p. 29).

She was not trained for employment outside of the home, and thus, without help, could not provide for her needs. Also her minor son had a heart ailment and was unable to work. (Tr. p.18).

In addition, Respondent had mothered and cared for Appellant's two minor sons during all of this period, and all lived in her home.

This home was livable, although it needed painting, but rather than paint, Appellant talked Respondent into having siding placed on it instead, thus incurring the indebtedness to First Federal Savings and

Loan Co., on which there was \$1,379.83 still due. (Tr. p. 29, 30).

Respondent, at the time of marriage, owned a 1962 Valiant, which was fully paid for. The addition of her new husband and two step-sons to the family made the car small for the family needs, and so it was traded in on the 1965 Valiant Station Wagon. The indebtedness thus incurred was the \$2,043.10 owed to Zions First National Bank. (Tr. p. 11).

During the marriage, a color TV set and encyclopedia set were purchased for family use and enjoyment and financed through City Finance Company of Murray. The balance owed was \$471.64.

It should be observed that all three obligations at the time of the divorce in no way enhanced or increased Respondent's standard of living, but simply continued it in the manner to which she had been accustomed.

Her sole living was calculated to be her small Social Security check, after it was reinstated, unless she could find employment. There was no way she could have paid off these three obligations.

The following statement from the record is enlightening:

(Mr. Hinton) "Q When the Stipulation was entered into in regard to the Divorce action, would you have been able to maintain yourself out of what you were receiving if he failed to pay these obligations?"

(Irene Erickson Robison) "A No."

(Mr. Hinton "Q When you entered into this agreement, what did you have in mind?"

(Irene Erickson Robison) "A Well, I figured he would pay those bills like the Stipulation ordered him to."

(Mr. Hinton) "Q And you felt you could get along?"

(Irene Erickson Robison) "A And I felt I could get along on the Social Security if I had no bills to pay." (Tr. p. 19).

Appellant has attempted to make a strong issue of the fact that the payments promised to be made in the divorce stipulation closely approximately the \$4700.00 plus odd dollars Respondent had at the time of marriage, and thus was a reimbursement and property settlement rather than for support and maintenance.

The best answer to this argument is in the testimony of the Respondent, who was a party to the divorce.

(Mr. Hinton) "Q Now, on cross-examination, you indicated that this settlement was to reimburse you for funds that you had before the marriage. Was there more involved to it than that?"

(Irene Erickson Robison) "A Well, yes. The money that I had spent on his bills, and that, there was the interest on that that I figured in on that, too."

(Mr. Hinton) "Q And what about support and maintenance?"

(Irene Erickson Robison) "A I don't get what you mean."

(Mr. Hinton) "Q What about his obligation to support you? Did this figure in your decision?"

(Irene Erickson Robison) "A Yes, because you just can't maintain a place on that small amount of money that I was getting."

(Mr. Hinton) "Q This was not only a repayment?"

(Irene Erickson Robison) "A It was for support. Actually, you can't maintain a house and that on \$160.00 a month, and pay your utilities and everything." (Tr. p. 30, 31).

In the case of *In re Hollister*, (DCNY 1942) 47 F. Supp. 154, aff'd per curiam, (CCA-2, 1943) 132 F. 2nd 861, it was held that:

"Although a bankrupt's indebtedness to his wife as it existed previous to an adjudication in bankruptcy would have been discharged by the bankruptcy, when the parties agreed that payment of the indebtedness should serve to release the bankrupt from his duty to support his wife, upon the granting of a divorce, it no longer constituted payment of a simple debt, for the debt had been converted into a contract for the maintenance and support of the wife within the meaning of Section 17 of the Bankruptcy Act."

See also *Battles v. Battles*, (Okla. 1952) 239 P. 2nd 794.

8B - Corpus Juris Secundum, 48 Bankruptcy Paragraph 570:

“Under the Bankruptcy Act, a discharge in Bankruptcy does not release the bankrupt from a debt for alimony due, or to become due, or for maintenance or support of his wife or child, claims of this nature come within the exception, even though they have been embodied in agreements between the parties, and even though they have been reduced to judgment.

Claims under agreements for maintenance and support are within the exceptions even though the agreement contains other features not falling strictly within the exception; . . . ”

The matter of Avery (C.C.A. 6th, 1940) 44 Am. B. R. (N.S.) 168, 114 F. 2nd 768, states as follows:

“Where a judgment against the bankrupt in favor of his divorced wife represented the amount of arrears due under a divorce decree which confirmed a “property settlement” between the parties, and such settlement contract shows that the amounts to be paid thereunder were intended for alimony and for the support and maintenance of the wife, the bankrupt cannot successfully contend that such judgment was discharged in bankruptcy.”

Nadler’s “The Law of Bankruptcy”, 2nd Edition, Paragraph 791, page 661, states:

“Akin to claims for alimony are liabilities for the ‘maintenance or support of wife or child’.¹⁴¹ Date of payment with reference to divorce or to bankruptcy is immaterial.¹⁴² Nor does it matter whether the obligation is made part of a Court decree¹⁴³ or is the subject matter of a settlement agreement between husband and

wife.¹⁴⁴ Here, too, there is no merger into a subsequent judgment, and the Court may go behind the judgment.¹⁴⁵ Since the liability for maintenance or support is not a debt, but is founded upon a legal duty, it is still such an undischageable obligation, even though the child whose maintenance is involved is illegitimate and the order to pay was issued in a bastardly proceeding".¹⁴⁶

Another fact stands out in the events which brought about this lawsuit, the bankruptcy filing on the part of the Appellant. It occurred on July 28, 1966. However, from the date of the Divorce Stipulation in September, 1965, until the bankruptcy filing, there is no evidence that he paid any payments on the three accounts. Also, these three bills and one other, a small dentist bill for \$84.00 for work done on his own son's teeth, constitute all of the creditors listed in the bankruptcy proceeding. One could easily surmise that he entered into the stipulation in bad faith, never intending to pay, and imposing the entire burden of family support and maintenance and debts upon Respondent.

A summary of the opinion in the case of *In Re Martin*, United States District Court, Southern District, Central Division (July 14, 1964) C.C.H. Section 4143, Case No. 61,138, states as follows:

"A bankrupt was denied an injunction to stay state court proceedings which were instituted by his former wife to collect monthly payments provided by the property settlement agreement in their divorce action where the language of the

agreement was in effect an agreement for support and not a division of community property as labeled and where there was strong evidence that the bankrupt had not acted in good faith. Three weeks after the divorce the bankrupt filed a voluntary petition of bankruptcy, listing his former wife as the only creditor. Until the divorce had been made final he had regularly paid the \$500 per month amount stipulated in the property settlement agreement. The bankrupt contended that because the payments due were labeled property settlements and was part of a division of community property that the payments due should have been discharged with the filing of bankruptcy and that his former wife should be enjoined from bringing suit to collect these payments. The court rejected this contention on several grounds. First, the bankrupt had "unclean hands", because he filed his petition in bankruptcy in bad faith. The bankrupt was not insolvent at the time of filing, and he attempted to transfer title to a piece of property valued at \$4000 to his attorney for \$900 consideration seven days before the filing of the petition. He also had \$900 in cash on his person when he listed his wife as the only creditor to an amount of \$345. The court said that they would not interfere in his behalf or grant him any relief, because he had violated the moral concepts of good conscience. The court also denied relief on the basis of its interpretation of the property settlement agreement under the Bankruptcy Act."

Appellant's efforts in his brief to discount this Court's ruling in the case of *Lyon vs. Lyon* (1949) 115 Utah 466, 206 P. 2d 148, are of no avail. His

attempts to distinguish are without merit as they endeavor to circumvent the natural and legal duty the husband has to support his wife.

The Lyon case seems to be directly in point with the fact situation of the present case. The Court's determination that even though a divorce decree provided for a property settlement in accordance with the stipulation of the parties, such property settlement was really an award for the support and maintenance of the defendant's wife "in the nature of alimony" and therefore the obligation thereunder was not discharged in bankruptcy. This would also seem to be a proper determination in the instant case.

On the other hand, Appellant's reliance upon the more recent Utah case of *Fife vs. Fife* (1954), 1 Utah 2nd 281, 265 P. 2nd 642, comes through a misinterpretation of the reason for the Court's decision. The fact of the matter is that *there was never a valid marriage* and hence no duty or requirement of alimony, support or maintenance. The ostensible marriage relationship was severed by an annulment rather than by divorce. Naturally, under these particular facts, the obligations would be dischargeable in bankruptcy. However, the decision would undoubtedly have been entirely different had the marriage been valid rather than void.

The Court concluded its decision with this statement, "We confine our conclusion to the facts of this case alone", . . . Thus, there was no effort to overrule,

distinguish, or even criticize the Court's 1949 ruling in the Lyon case, and, therefore, it still stands.

Appellant, if the cases are properly understood, has no Utah authorities to back up his position, and the decisions from other states should not be too persuasive. It should be noted, too, that most of Appellant's out-of-state citations are very old: In *Re Ostrander*, 139 F. 592 (1905); *Schellenberg v. Mullaney*, 112 App. Div. 384, 98 N.Y.S. 432, (1906); In *Loman v. Locke*, 134 N.E. 343, (1921) or were from California.

The quoted California case in Appellant's brief, *Smalley vs. Smalley* (1959) 176 Cal. App. 2nd (Adv. 402), 1 Cal Rptr 440, and is the principal case in 74 ALR 2nd 756, states:

"It has been squarely held in California that, where the parties have entered into a property settlement agreement whereby payments are thereafter to be made to the wife, *not for support* but in settlement of property rights, the discharge in bankruptcy of the husband discharges the debt."

This citation gives the other California cases cited in Appellant's brief as following this same rule: *Tropp v. Tropp*, 129 Cal App 62, 18 P 2nd 385; *Fernandes v. Pitta*, 47 Cal App 2nd 248, 117 P 2nd 728. In the latter case, it "stated in paragraph 15 that the contract was made '*solely* for the purpose of settling rights of property and support which arise between the parties on account of their present separation'."

In contrast the California rule as held in *Remondino v. Remondino*, 41 Cal. App. 2nd 208, 106, P 2nd 437, as that:

“An alimony judgment or a judgment which can properly be construed as being for alimony *is not affected* by a discharge in bankruptcy.”

Also, the annotation in 74 ALR 2nd 760, states:

“Even though the agreement between the spouses was called a property settlement and was referred to as such in the decree divorcing the parties, the obligation thereunder was held **not dischargeable** in bankruptcy, where the agreement was in substance one for maintenance and support.” *Blair v. Blair* (1941) 44 Cal App 2nd 140, 112 P2nd 39.

The contrasting rules seem to be as stated in 74 A.L.R. 2nd 759, paragraph 2 (a):

“In a number of cases it has been held or recognized that a property settlement agreement between spouses is dischargeable in bankruptcy, at least where it is truly or substantially a property settlement agreement, and not an agreement for alimony, support or maintenance.”

Paragraph 2 (b) states:

“But where the agreement is substantially one for alimony, maintenance, or support, it has been held or recognized that the obligation thereunder is not dischargeable in bankruptcy.”

These cases all turn on a clearly established property settlement, whereas Respondent maintains in the instant case that it was not a property settlement but

was in the nature of support and maintenance. In light of facts of this case, and all of the cases and the texts cited, the Court would have more than ample support to rule that Appellant's obligations could not be discharged by his filing for bankruptcy.

POINT II

THE OBLIGATIONS SUED UPON BY THE RESPONDENT WERE NOT IN THE NATURE OF PROPERTY SETTLEMENT AGREEMENTS AND THE COURT DID NOT ERR WHEN IT FOUND THAT SUCH OBLIGATIONS WERE FOR SUPPORT AND MAINTENANCE OF THE RESPONDENT, THAT SUCH OBLIGATIONS WERE NOT DISCHARGED BY THE BANKRUPTCY PROCEEDINGS.

There is no question but what an agreement was made in this case, later being embodied in a written stipulation and then in the Divorce Decree. Respondent differs from the Appellant's interpretation in that the payments were always considered by the Respondent to be essential for her solvency and living. She had no job, was unskilled and had no income except from social security, which was barely enough to make ends meet. She should not possibly have paid these family obligations. This was not the settlement of a simple debt, but the agreement converted it into a contract for maintenance and support.

Another factor is also significant. Appellant promised, under the terms of the stipulation and divorce decree, to "save Plaintiff (Respondent) harmless from any suit or action" appertaining to these three family obligations. In Appellant's answer filed in the District Court, and which is a part of the record now before the Court in the appeal, the Defendant (Appellant) *admitted* in each of these three causes of action that this "save harmless" provision would apply. Respondent maintains that this "save harmless" provision is an additional reason why these obligations were debts not provable in bankruptcy since the "save harmless" clause would not take effect until the principal obligations were actually discharged by bankruptcy and Respondent had paid or assumed them.

The case of *Steele v. Georgia Finance, Inc.*, 53 Ga. App. 543, 86 S.E.580, states:

"A debt which is not provable is not dischargeable in bankruptcy. Thus, the obligation of a surety on a forthcoming bond is not a provable debt, and hence not dischargeable in bankruptcy, where the petition in bankruptcy of the Surety was filed before the breach of the bond."

Numerous cases have held that settlement agreements in divorce cases may be considered as maintenance and support, and therefore not dischargeable. Some of these cases are as follows:

In *Poolman v. Poolman* (C.A. 8th, 1961) 289 F (2nd) 332, the Court held:

“that a state Court judgment against a husband enforcing the terms of a property settlement whereby the husband was to make the necessary payments on a note secured by a trust deed on the home which she had been awarded was a non-dischargeable debt since the obligation to maintain and support a family ‘includes the obligation to keep a roof over their heads.’ ”

In a case similar to Poolman and following its doctrine, the Court said:

“that while household furniture and an automobile (payments on which were required to be made by the divorce agreement) may not be quite so basic as a roof over the wife’s head, they partake of the same nature.” In re Baldwin (D. Neb. 1966) 250 F. Supp. 533.

Henson v. Henson, Mo. App. 1963, 366 S.W. 2nd 1, states:

“Where property settlement agreement is substantially for alimony, maintenance or support, husband’s obligation thereunder is not dischargeable in bankruptcy, and such is true even though property rights are adjusted between the parties for the purpose of furnishing that support.”

Also:

“It is not only alimony and maintenance in conventional form that is not released by a discharge in bankruptcy, but all obligations for maintenance and support of wife or child, whether denominated alimony or maintenance by statute or created by agreement of the parties.”

U.S. In re Adams, C.C.A. N.Y. 25 F. 2nd 640, states:

"A husband's debt, under contract before divorce to pay annuity to his wife, is not released by discharge, being 'liability for maintenance of wife'."

U.S. In re Runge, D.C. N.Y. 15 F. Supp. 31, states:

"Where separation agreement obligated husband to pay wife lump sum in monthly installments and gave wife right to declare all installments due on default in one installment, and wife obtained judgment for all installments on default, full amount due under agreement was due her for maintenance at her death, and hence, no part of Judgment was dischargeable in bankruptcy."

N.Y. D'Andria v. Hegeman, 2 N.Y.S. 2nd 832, 253 App. Div. 518, motion denied, 4 N.Y.S. 2nd 376, 254 App. Div. 662, affirmed in N.E. 2nd 294, 278 N.Y. 630, quotes:

"An agreement whereby husband promised to pay former wife stated sum by weekly payments in discharge of debt, and also in lieu of payments for maintenance and support was contract for maintenance or support of wife unaffected by his discharge, notwithstanding benefits inure to wife's estate on her death, since payments were not payments of simple debt."

In Re Alcorn (D.C. Cal. 1958) 162 F. Supp. 206, CCH Dec. 59, 285, states:

"A bankrupt's alimony liability to his former wife, since the agreement entered into at the time of the divorce and denominated 'property settlement agreement', is one which embodies

within its terms the common-law or statutory duty, and consequently is essentially a contract for maintenance and support."

Again we wish to emphasize that the facts of this particular case would take the stipulation out of the simple debt or property settlement category and make it a contract for support and maintenance. While the divorce was granted to the appellant, he was able to obtain it only after negotiations and agreement with Respondent. Thus Appellant's repeated statements in his brief that because he obtained the divorce the "Court was not obligated to make any award for support" (Tr. 3 p. 8, 21) are obviously in error.

The Court's Findings of Fact entered on April 7, 1967, and signed by Judge Maurice Harding held: (5) . . . "Said obligation incurred originally for siding for Plaintiff's home at Lehi, Utah, is for maintenance and support of Defendant's wife, and is not a provable debt which would be dischargeable under Section 17 of the Federal Bankruptcy Act."

That the obligation for a set of encyclopedias and television set is: (7) . . . "for maintenance and support of Defendant's wife in the manner to which Plaintiff was accustomed, and is not a provable debt which would be discharged under Section 17 of the Federal Bankruptcy Act."

(9) . . . said obligation is for maintenance and support of Defendant's wife in the nature of a necessary family vehicle, and is not a provable debt which

would be dischargeable under Section 17 of the Federal Bankruptcy Act."

The above stated Findings of Fact were supported by abundant competent evidence.

Over the years it has been the consistent ruling of the Court that the Supreme Court cannot disturb the trial Court Findings of Fact if there is any competent evidence to support the Findings.

Nagle v. Club Fontainebleau, 405 P.2d 346, 17 Utah 2nd, 125:

"Presumptions are in favor of Trial Court's Findings and Judgment, and burden is on appellant to show to contrary."

Weight v. Miller, 396 P.2d 626, 16 Utah 2nd, 112:

"Findings and Judgment supported by substantial evidence cannot properly be disturbed."

Lake v. Pinder, 368 P.2nd 593, 13 Utah 2nd, 76.

"If there is substantial evidence furnishing reasonable basis in support of lower Court's Findings, when evidence is viewed most favorable to Findings, Judgment based thereon must be affirmed."

Thorley v. Kolob Fish & Game Club, 373 P.2nd 574, 13 Utah 2nd, 294:

"Reviewing Court could not disturb Findings supported by substantial evidence."

Lowe v. Rosenlof, 364 P.2nd, 418, 12 Utah 2nd 190:

"Court's Findings of Fact will not be disturbed as long as they are supported by substantial evi-

dence, and Findings of lower Court must be affirmed unless there is no reasonable basis in evidence."

See also the following cases:

Charlton v. Hackett, 360 P.2nd. 176, 11 Utah 2nd.

389:

Parrish v. Tahtaras, 318 P.2nd. 642, 7 Utah 2nd.

87:

Dalton v. Dalton, 307 P.2nd 894, 6 Utah 2nd. 136,

Malstrom v. Consolidated Theatres, 290 P.2nd.

689, 4 Utah 2nd. 181.

It has been further held in Rummell v. Bailey, 320 P.2nd. 653, 7 Utah 2nd. 138, that:

"Upon review of determination of issues of Fact, all the evidence and every inference and intendment fairly arising therefrom should be taken in the light most favorable to the Finding made by the Trial Court. And if when so viewed, there is substantial support in the evidence for the Finding made, it should not be disturbed."

CONCLUSION

For the reasons herein stated, the Judgment of the Lower Court should be affirmed.

Respectfully submitted,

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